

AMENDED IN SENATE MAY 10, 2005

AMENDED IN SENATE APRIL 11, 2005

**SENATE BILL**

**No. 851**

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**Introduced by Senator Murray**

February 22, 2005

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An act to add Article 22.5 (commencing with Section 20369.2) to Chapter 1 of Part 3 of Division 2 of the Public Contract Code, and to amend Sections 130051.7 and 130243 of the Public Utilities Code, relating to the Los Angeles County Metropolitan Transportation Authority.

LEGISLATIVE COUNSEL'S DIGEST

SB 851, as amended, Murray. Los Angeles County Metropolitan Transportation Authority.

Existing law creates the Los Angeles County Metropolitan Transportation Authority for the purpose of carrying out specified powers and duties relating to transportation in the County of Los Angeles. The authority is the successor to the Los Angeles County Transportation Commission and the Southern California Rapid Transit District.

This bill would make conforming changes relative to these provisions.

Existing law requires public entities to engage in certain competitive bidding procedures in procuring goods and services.

This bill would establish an alternative procedure for the Los Angeles County Metropolitan Transportation Authority to utilize in the procurement of goods and services. By requiring the authority to engage in a competitive bidding process, the bill would impose a state-mandated local program.

Existing law establishes a change order procedure for the Los Angeles County Metropolitan Transportation Authority to use for contracts awarded by the authority, including a requirement that the contract administrator require the contractor to submit certain certified data and an internal audit on any change order exceeding a cost of \$100,000.

This bill would require the contract administrator to undertake those actions whenever federal regulations require it.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~ *bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 22.5 (commencing with Section  
2 20369.2) is added to Chapter 1 of Part 3 of Division 2 of the  
3 Public Contract Code, to read:

4  
5 Article 22.5. Los Angeles County Metropolitan  
6 Transportation Authority Alternative Procurement Procedure  
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8 20369.2. (a) The Los Angeles County Metropolitan  
9 Transportation Authority may use the procedures contained in  
10 this article as an alternative method for the procurement of  
11 goods, equipment, material, and for contracting for the  
12 construction of public works and other services.

13 (b) For the purposes of this article, the following terms have  
14 the following meanings:

15 (1) "Authority" means the Los Angeles County Metropolitan  
16 Transportation Authority.

17 (2) "Best value" means the overall combination of quality,  
18 price, and other elements of a proposal that, when considered

1 together, provide the greatest overall benefit in response to  
2 requirements described in the solicitation documents.

3 (3) “Commercial item” means either:

4 (A) Personal property that is generally available in commercial  
5 quantities, customarily used by the public or nongovernmental  
6 entities for other than governmental purposes, that has been or is  
7 offered for sale, lease, or license to the public.

8 (B) Services offered or provided competitively in substantial  
9 quantities in the commercial marketplace based on established  
10 catalog or market pricing for specific tasks or outcomes to be  
11 achieved under standard commercial terms and conditions.

12 (4) “Competitive procurement” means a process in which  
13 more than one bidder or proposer is eligible to bid or propose on  
14 goods or services based upon established criteria, and the  
15 selection of the successful bidder is based on those criteria.

16 (5) “Electronic commerce” means activities that use computer  
17 technology including, but not limited to, electronic data  
18 interchange, the Internet, and other electronic technologies to  
19 enhance and streamline the procurement process.

20 (6) “Electronic data interchange” means the  
21 computer-to-computer exchange of business information in a  
22 standard electronic format to process transaction documents.

23 (7) “Fair and reasonable price” means a cost which, in light of  
24 prevailing circumstances and price analysis techniques, balances  
25 the interests of the buyer and the seller and, based upon those  
26 circumstances and analyses, is determined to be acceptable.

27 (8) “Fixed price” means a contract price that is set at a  
28 specified amount and is not subject to change without a  
29 modification of the contract.

30 (9) “Full and open competition” means competition based  
31 upon solicitation documents that permit all responsible providers  
32 of the goods or services described in the solicitation documents  
33 to compete.

34 (10) “Micropurchases” are purchases that, when the total price  
35 is estimated at the time of the solicitation, are not expected to  
36 exceed two thousand five hundred dollars (\$2,500).

37 (11) “Noncompetitive procurements” are procurements made  
38 by a solicitation of a proposal from only one source, either  
39 initially, or after solicitation of a number of sources, based on the  
40 authority determination that competition is inadequate.

1 (12) “Purchase card” means an instrument, similar in nature to  
2 a commercial credit card, issued to authorized agency personnel  
3 to use to acquire and pay for supplies and services.

4 (13) “Reverse auction” means a competitive solicitation  
5 process to obtain fungible goods or services in which bidders  
6 compete against each other in real time in an open and interactive  
7 bidding environment via the Internet.

8 (14) “Sealed bid process” means a method of contracting that  
9 employs the solicitation of competitive bids, the public opening  
10 of bids, and the awarding of contracts to the lowest responsive,  
11 responsible bidder.

12 (15) “Small purchases” are purchases that, when the total price  
13 is estimated at the time of the solicitation, do not exceed one  
14 hundred thousand dollars (\$100,000). This maximum threshold  
15 amount shall be adjusted annually at the same rate of ~~change~~  
16 *exchange* as the \_\_\_\_.

17 (16) “Solicitation documents” are the documents containing  
18 all of the requirements of the procurement, including, but not  
19 limited to, the bidding or proposal requirements, a description of  
20 the required goods or services, and the contractual and regulatory  
21 requirements.

22 (17) “Two-step sealed bid process” is a sealed bid process to  
23 be conducted as follows:

24 (A) (i) First, as a condition that must be satisfied in order to  
25 later submit a sealed price bid, each bidder shall submit a  
26 technical proposal, including any corrections and clarifications  
27 that may be necessary.

28 (ii) The authority shall evaluate each technical proposal to  
29 determine the bidder’s responsiveness to the bid solicitation’s  
30 specifications and other requirements.

31 (B) (i) Upon determining those bidders who have adequately  
32 responded to the bid solicitation’s specifications and other  
33 requirements, the authority shall invite those bidders to submit a  
34 sealed price bid.

35 (ii) Only those bidders who have first submitted a technical  
36 proposal and subsequently received an invitation from the  
37 authority may submit sealed price bids in a two-step sealed bid  
38 process.

39 20369.3. (a) Except as specified in this article, the authority  
40 shall acquire goods, equipment, and materials, and contract for

1 the construction of public works and other services by a  
2 competitive procurement process. Competitive procurement  
3 methods may include a sealed bid process, competitive  
4 negotiations, or other competitive methods ensuring fair and  
5 open competition.

6 (b) The authority shall include in its solicitation a fair and  
7 reasonable method of evaluating proposals and a description of  
8 all of the factors that will be used in the evaluation process.

9 (c) Awards shall be made to the responsive, responsible bidder  
10 who submitted a proposal that provides the best value to the  
11 authority on the basis of the factors identified in the solicitation.

12 (d) The authority may use reverse auctions in accordance with  
13 the procedures described in this article.

14 (e) For competitive procurements using a sealed bid process,  
15 the authority may solicit bids using either a one or two-step  
16 sealed bid process and may establish procedures for the  
17 electronic submission of bids pursuant to Section 1601.  
18 Competitive procurements using a sealed bid process shall  
19 comply with all of the following requirements:

20 (1) Bidders shall submit sealed bids to the address provided,  
21 and by the deadline contained, in the solicitation.

22 (2) Except for technical proposals submitted as step one in a  
23 two-step sealed bid process, all sealed bids shall be opened  
24 publicly.

25 (3) Subject to the authority's power to reject all bids, the  
26 authority shall make the award to the lowest responsive,  
27 responsible bidder.

28 (4) If the bid from the lowest responsive, responsible bidder  
29 exceeds the funds available for the purchase or project, the  
30 authority may refrain from awarding the contract at the bid price  
31 and may negotiate with the lowest responsive, responsible bidder  
32 to obtain a contract price that does not exceed the available  
33 funds. If, at the completion of the negotiation, the authority elects  
34 to award the contract at the negotiated price, it shall award the  
35 contract to the lowest responsive, responsible bidder.

36 (f) The authority may purchase goods, equipment, and  
37 materials from a public auction sale, including public auctions  
38 held via the Internet, using the procedures established for all  
39 other participants in the auction.

1 20369.4. (a) Notwithstanding any other provision of this  
2 article, the authority may utilize the simplified procedures set  
3 forth in this section for the acquisition of commercial items  
4 when, at the time of the solicitation, the estimated total price will  
5 not exceed five million dollars (\$5,000,000).

6 (b) The authority's solicitation shall contain a clear, accurate,  
7 and complete description of the commercial items to be procured.  
8 When evaluation factors are used in solicitation of commercial  
9 items, the authority shall evaluate offers in accordance with the  
10 criteria contained in the solicitation.

11 (c) The authority shall request fixed prices in its acquisition of  
12 commercial items. The fixed prices requested may include fixed  
13 unit prices for one or more commercial items. Requirements,  
14 indefinite delivery, indefinite quantity, and similar forms of  
15 contracting may be used. Where commercial items will be  
16 ordered and delivered in multiple deliveries over the term of the  
17 contract, the fixed prices may include provisions for economic  
18 price adjustments.

19 (d) The authority shall use commercially reasonable methods  
20 of providing notice to potential bidders, including, but not limited  
21 to, advertising via the authority's Web site or other appropriate  
22 Web sites or electronic media.

23 (e) Provided that commercial items are sold in a competitive  
24 market in sufficient quantities, the authority may establish price  
25 reasonableness of bids for commercial items based on catalog  
26 pricing offered to other customers of the bidder or by other  
27 commercially reasonable methods of establishing fair and  
28 reasonable prices. A separate cost and price analysis for items  
29 purchased using the procedures set forth in this subdivision is not  
30 required.

31 (f) In any procurement pursuant to this section, bidders may  
32 propose more than one product that will meet the authority's  
33 specifications. The authority shall evaluate each proposed item as  
34 a separate bid.

35 (g) In determining whether to procure a commercial item, the  
36 authority may evaluate and consider the past performance of each  
37 bidder and each competing commercial item being proposed.

38 20369.5. (a) Notwithstanding any other provision of this  
39 article, the authority may utilize the simplified procedures set  
40 forth in this section for the acquisition of commercial items

1 constituting small purchases. In making small purchases, the  
2 authority shall do all of the following:

3 (1) Solicit price quotes from an adequate number of qualified  
4 sources.

5 (2) Receive price quotes from at least two difference sources.

6 (3) Sufficiently document the solicitation to establish that the  
7 price paid was fair and reasonable.

8 (b) Notwithstanding any other provision of this article, the  
9 authority may acquire commercial items constituting  
10 micropurchases without obtaining competitive quotes when the  
11 authority sufficiently documents the purchase to establish that the  
12 price paid was fair and reasonable.

13 (c) Small purchases and micropurchases may be made using  
14 an authority authorized purchase card or other similar electronic  
15 commercial media or commercially reasonable methods.

16 20369.6. (a) Noncompetitive procurements are not required  
17 to comply with the provisions of this article that relate to notice  
18 and advertising. The authority may use noncompetitive  
19 procurement when the chief executive officer or his or her  
20 designee determines that awarding a contract pursuant to  
21 Sections ~~20369.3~~ 20369.3, 20369.4, and 20369.5 is not in the  
22 best interest of the authority and one of the following reasons for  
23 a noncompetitive procurement exists:

24 (1) A public emergency, including, but not limited to, fire,  
25 earthquake, flood, storm, epidemic, terrorist activity, or other  
26 disaster has caused a need for the immediate receipt of goods or  
27 services in order to avert or avoid damage to public property, to  
28 replace, repair, or restore public property that has been damaged  
29 or destroyed, including equipment or facilities necessary to  
30 provide essential public transportation services, or to take other  
31 immediate remedial measures, and the immediate need for the  
32 goods or services outweighs the public interest in conducting a  
33 competitive bidding procedure.

34 (2) The service is a regulated utility service and there is no  
35 competition.

36 (3) The goods, services, equipment, or construction will be  
37 obtained from or performed by a federal, state, or local entity or  
38 agency.

39 (4) The item to be purchased is either:

1 (A) Prototype equipment or a modification of existing  
2 equipment and the purpose of the procurement is to conduct an  
3 evaluation or operational testing of the equipment.

4 (B) An existing used, unique, and generally unavailable item  
5 of equipment, and the purchase of a similar new or untested item  
6 of equipment would not be cost effective.

7 (5) The item is available from only one responsible source and  
8 no other type of supplies, services, or equipment will satisfy the  
9 authority's requirements.

10 (6) The contract is a follow-on contract for the continued  
11 development or production of a system or specialized equipment,  
12 or a major component thereof, and it would not serve the best  
13 interests of the authority to award the contract to another source  
14 because doing so would cause either of the following to occur:

15 (A) Substantial duplication of cost to the authority due to  
16 duplication of work and other inefficiencies that could not be  
17 recovered through competition.

18 (B) Material delays in fulfilling the authority's requirements.

19 (7) After a solicitation of a number of sources, the authority  
20 determines that there is inadequate or no competition.

21 (8) The item is a capital maintenance item that can be  
22 procured only from the original manufacturer or supplier of the  
23 item.

24 (9) In accordance with an existing written authority  
25 standardization program, only specified makes and models of  
26 technical equipment or parts will meet the authority's need for  
27 additional units or replacement items, and only one source is  
28 available.

29 (b) The chief executive officer shall set forth in writing all of  
30 the rationale upon which the authority relied when the authority  
31 elects to engage in noncompetitive procurement.

32 20369.7. Notwithstanding any provisions of this article, the  
33 authority may use reverse auctions in its acquisition of goods and  
34 services. Reverse auction procedures shall comply with all of the  
35 following requirements:

36 (a) The authority may require vendors to be prequalified by  
37 the authority prior to submitting bids and shall require vendors to  
38 register before the reverse auction opening date and time. As part  
39 of the registration, vendors shall agree to the terms, conditions,  
40 and other requirements of the solicitation.



1 (b) The authority shall include in the description of its reverse  
2 auction solicitation process an adequate specification of the  
3 goods or services being acquired, the opening date and time  
4 when real-time electronic bids will be accepted, and a  
5 designation of the closing date and time when no additional bids  
6 will be accepted.

7 (c) The reverse auction bid process shall allow all of the  
8 following:

9 (1) Bidders to post all bids electronically via the Internet.

10 (2) Bids to be updated on a real-time basis.

11 (3) A registered bidder, at any time during the period in which  
12 bids may be accepted, to decrease his or her bid to an amount  
13 below the lowest bid then posted.

14 SEC. 2. Section 130051.7 of the Public Utilities Code is  
15 amended to read:

16 130051.7. (a) The Los Angeles County Metropolitan  
17 Transportation ~~Commission~~ *Authority* shall conduct regular  
18 meetings at least once during each quarter of the calendar year.

19 (b) Notwithstanding subdivisions (a) and (b) of Section  
20 130051, the members of the Los Angeles County Board of  
21 Supervisors and the Mayor of the City of Los Angeles, rather  
22 than their alternates, shall personally serve at the meetings.

23 (c) Notwithstanding Section 30201, the members of the Los  
24 Angeles County Board of Supervisors, rather than their  
25 appointees, shall personally serve at the meetings.

26 (d) Notwithstanding Section 30201, the Mayor of the City of  
27 Los Angeles, rather than the mayor's appointee, shall personally  
28 serve at the meetings as one of the two directors representing the  
29 City of Los Angeles.

30 (e) It is the intent of the Legislature that reasonable efforts be  
31 made to discuss major fiscal and policy items related to the Los  
32 Angeles County Metropolitan Transportation Authority at the  
33 meetings required by subdivision (a). This statement of  
34 legislative intent shall not be construed as requiring any action  
35 which would interfere with, delay, or otherwise impede the  
36 orderly and proper functioning of the Los Angeles County  
37 Metropolitan Transportation Authority.

38 SEC. 3. Section 130243 of the Public Utilities Code is  
39 amended to read:

1 130243. The Los Angeles County Metropolitan  
2 Transportation Authority shall adopt a change order procedure  
3 for contracts awarded by the authority that includes each of the  
4 following requirements:

5 (a) When a change order is proposed, the contract  
6 administrator of the authority shall be notified and shall  
7 determine whether a change order is required. After consulting  
8 with the general counsel of the authority and appropriate  
9 technical advisers, the contract administrator shall either approve  
10 or disapprove the proposed contract change order.

11 (b) The general counsel of the authority shall be consulted on  
12 the proposed change order at the earliest possible time to  
13 consider and render advice on the legal implications of the  
14 proposed change. The contract administrator shall not approve a  
15 proposed change order unless the general counsel recommends  
16 changing the terms of the contract.

17 (c) The contract administrator shall require the contractor to  
18 submit certified cost and pricing data for the proposed change,  
19 and shall require an internal fiscal audit of any proposed change  
20 order consistent with federal regulations.

21 (d) The opinions of informed individuals working on the  
22 contract who oppose the adoption of a proposed change order  
23 shall be documented and be taken into consideration by the  
24 authority's change control board when determining whether a  
25 contract change is warranted.

26 ~~SEC. 4. If the Commission on State Mandates determines that~~  
27 ~~this act contains costs mandated by the state, reimbursement to~~  
28 ~~local agencies and school districts for those costs shall be made~~  
29 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
30 ~~4 of Title 2 of the Government Code.~~

31 *SEC. 4. No reimbursement is required by this act pursuant to*  
32 *Section 6 of Article XIII B of the California Constitution because*  
33 *the only costs that may be incurred by a local agency or school*  
34 *district are the result of a program for which legislative authority*  
35 *was requested by that local agency or school district, within the*  
36 *meaning of Section 17556 of the Government Code and Section 6*  
37 *of Article XIII B of the California Constitution.*